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सं. 20] नई दिल्ली, अगस्त 15—अगस्त 21, 2004, शनिवार/श्रावण 24—श्रावण 30, 1926

No. 20] NEW DELHI, AUGUST 15—AUGUST 21, 2004, SATURDAY/SRAVANA 24—SRAVANA 30, 1926

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के लिए रखा जा सके।
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किये गये आदेश और अधिसूचनाएं
Orders and Notifications issued by Central Authorities (excluding the Administrations of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 5 अगस्त, 2004

आ. अ. 48.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसारण में, निर्वाचन आयोग, 1999 की निर्वाचन अर्जी सं. 2 में, चण्डीगढ़ स्थित पंजाब और हरियाणा उच्च न्यायालय के तारीख 13-11-2003 के निर्णय को एकद्वारा प्रकाशित करता है। (निर्णय इस अधिसूचना के अंग्रेजी भाग में छपा है।)

[सं. 82/हरि-लो. स. 2/99]

आदेश से,

के० अजय कुमार, सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 5th August, 2004

O. N. 48.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Judgement of the High Court of Punjab and Haryana at Chandigarh dated 13-11-2003 in Election Petition No. 2 of 1999.

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**
Civil Original Side
Election Petition No. 2 of 1999

Surender Singh son of Shri Bansi Lal, resident of Vijay Nagar, Hansi Raod, Bhiwani, Distt. Bhiwani.Petitioner

Versus

Ajay Singh Chautala son of Shri Om Parkash Chautala, H. No. 803, Ward No. 3, Sirsa, Distt. Sirsa.Respondent

Election petition under Sections 80, 80-A, 82 read with Section 100 of the Representation of the People Act, 1951 praying that this Hon'ble High Court may be pleased to declare the election in question of Shri Ajay Singh Chautala, the returned candidate, as void and may allow the present election petition with costs in the interest of justice. This Hon'ble High Court may also pass any other appropriate order or direction under the circumstances of this in favour of the election petitioner.

Dated the 13th November, 2003

PRESENT

The Hon'ble Mr. Justice K.C. Gupta

For the Petitioner : Mr. M.L. Saggar, Advocate

For the Respondent : Mr. Sukhbir Singh, Advocate

ORDER

The counsel for the petitioner contended that the elections are round the corner in some states in December, 2003 and then the parliamentary elections are to take place. In such circumstances, the counsel for the petitioner prays that this petition may be dismissed for non prosecution. I order accordingly.

Sd/-

November, 13, 2003

K.C. GUPTA, Judge
[No. 82/HN-HP/2/99]

By Order,

K. AJAYA KUMAR, Secy.

नई दिल्ली, 9 अगस्त, 2004

आ.अ. 49 .—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग, 1999 की याचिका सं. 4 पर गुवाहाटी उच्च न्यायालय के 5 मार्च, 2004 के आदेश को इसके द्वारा प्रकाशित करता है। (निर्णय इस अधिसूचना के अंग्रेजी भाग में छपा है)।

[सं. 82/असम-लो.स./(4/1999)/2004]

आदेश से,

कें. अजय कुमार, सचिव

New Delhi, the 9th August, 2004

O. N. 49 .—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the order dated the 5th March, 2004 of the Gauhati High Court in the Election Petition No. 4 of 1999.

IN THE GAUHATI HIGH COURT

**(THE HIGH COURT OF ASSAM, NAGALAND,
MEGHALAYA, MANIPUR, TRIPURA, MIZORAM &
ARUNACHAL PRADESH)**

Election Petition No. 4/1999

Shri Kanakeshwar NarzaryPetitioner

Versus

Deputy Commissioner Kokrajhar & Returning Officer 5 Kokrajhar (ST) H.P. Constituency P.O. Kokrajhar & Ors.Respondent

PRESENT

The Hon'ble Mr. Justice I.A. Ansari

For the Petitioner : Mr. P. K. Musahary, Mr. Manas Sarania, Advocates.

For the Respondents : Mrs. Deka, Adv. Mr. K.P. Pathak, Mr. M. Nath. For Resptd., No. 9 Mr. S. S. Dey, Mr. M. Singh (Resptd. (For Nos. 2 & 3) Mr. P. N. Choudhury (For Resptd. No. 4 & 5) G.A., Assam.

ORDER

In response to the advertisement published in terms of the directions given in this case on 24-11-2003, none has appeared to continue this election application. In view of the above and in the interest of justice, this election petition stands closed.

This election petition stands disposed of in terms of the above directions.

Sd/-

I. A. ANSARI, Judge
[No. 82/AS-HP(4/1999)/2004]

By Order,

K. AJAYA KUMAR, Secy.

आदेश

नई दिल्ली, 9 अगस्त, 2004

आ.अ. 50 .—यह: भारत निर्वाचन आयोग का यह समाधान हो गया है कि श्री ब्रह्मभट्ट सुनील कुमार कान्तीभाई, पो. लुनावाडा स्वामीनारायण नगर, बधारी रोड, लुनावाडा गुजरात, जो 121-शेहर विधान सभा निर्वाचन क्षेत्र से 2002 में हुए गुजरात विधान सभा के लिए साधारण निर्वाचनों में एक अभ्यर्थी थे, लोक प्रतिनिधित्व अधिनियम, 1951 और उसके अधीन बनाए गए नियमों द्वारा यथा अपेक्षित अपने निर्वाचन व्यक्ति का लेखा दाखिल करने में असफल रहे हैं;

और यतः, उक्त अध्यर्थी ने निर्वाचन आयोग द्वारा सम्बन्ध सूचना दिए जाने के बाद भी उक्त असफलता के लिए कोई कारण या स्पष्टीकरण प्रस्तुत नहीं किया है। उनके द्वारा प्रस्तुत किए गए स्पष्टीकरण/अभ्यावेदन, यदि कोई है, पर विचार करने के बाद यह समाधान करता है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायावैचित्र नहीं हैं;

अतः अब, उक्त अधिनियम के अनुच्छेद 10-के अनुसरण में, निर्वाचन आयोग एतद्वारा यह घोषणा करता है कि श्री ब्रह्मभट्ट सुनीलकुमार कान्तीभाई, इस आदेश की तारीख से तीन वर्षों की अवधि के लिए, संघ राज्य क्षेत्र अथवा राज्य की विधान सभा अथवा विधान परिषद् अथवा संसद के किसी भी सदन के सदस्य चुने जाने और होने के लिए, निरहित घोषित करता है।

[सं. 76/गुज./2003/प.अनु.-I]

आदेश से,
एस० के० कौरा, सचिव

ORDER

New Delhi, the 9th August, 2004

O. N. 50 .—Whereas, the Election Commission of India is satisfied that Shri Brahmabhatt Sunilkumar Kantibhai, At. Lunawada, Swaminarayan Nagar, Vardhari Road, Lunawada, Gujarat a contesting candidate at the General Election to the Gujarat Legislative Assembly held in 2002 from 121-Shehra Assembly Constituency has failed to lodge the account of his election expenses as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And whereas, the said candidate has either not furnished any reason or explanation for the said failure even after due notice by the Election Commission or after considering the representation made by him, if any, the Election Commission satisfied that he has no good reason or justification for the said failure;

Now, therefore, in pursuance of Section 10A of the said Act, the Election Commission hereby declares Shri Brahmabhatt Sunilkumar Kantibhai to be disqualified for being chosen as and for being a member of either House of Parliament or the Legislative Assembly or Legislative Council of a State or Union Territory for a period of three years from the date of this order.

[No. 76/GJ/2003/W.S.-I]

By Order,
S. K. KAURA, Secy.

आदेश

नई दिल्ली, 9 अगस्त, 2004

आ. अ. 51 .—यतः भारत निर्वाचन आयोग का यह समाधान हो गया है कि गोवा विधान सभा के लिए 2002 में हुए साधारण निर्वाचनों

में 11-तालेङ्गाझो विधान सभा निर्वाचन क्षेत्र से एक अध्यर्थी श्री तलवार शंकर लक्ष्मण, म.नं. 944-3ए, टोंका कुमराभाट, पो.आ. कारानजालेम, गोवा, लोक प्रतिनिधित्व अधिनियम, 1951 और उसके अधीन बनाए गए नियमों द्वारा यथा अपेक्षित अपने निर्वाचन व्यर्थों का सेखा दाखिल करने में असफल रहे हैं;

और यतः, उक्त अध्यर्थी ने निर्वाचन आयोग द्वारा सम्बन्ध सूचना दिए जाने के बाद भी उक्त असफलता के लिए कोई कारण या स्पष्टीकरण प्रस्तुत नहीं किया है। उनके द्वारा प्रस्तुत किए गए स्पष्टीकरण/अभ्यावेदन, यदि कोई है, पर विचार करने के बाद यह समाधान करता है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायावैचित्र नहीं है;

अतः अब, उक्त अधिनियम के अनुच्छेद 10-के अनुसरण में, निर्वाचन आयोग एतद्वारा यह घोषणा करता है कि श्री तलवार शंकर लक्ष्मण, म.न. 944-3ए, टोंका कुमराभाट, पो.आ. कारानजालेम, गोवा, को संसद के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है।

[सं. 76/गोवा-पिलॅ/2002]

आदेश से,
एस० के० कौरा, सचिव

ORDER

New Delhi, the 9th August, 2004

O. N. 51 .—Whereas, the Election Commission of India is satisfied that Shri Talwar Shankar Laxman, H. No. 944-3A, Tonca, Cumrabhat, P.O. Caranzalem, Goa contesting candidate at the General Election to the Goa Legislative Assembly held in 2002 from the 11-Taleigao Assembly Constituency has failed to lodge the account of his election expenses in manner as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And whereas, the said candidate has not furnished any reason or explanation for the said failure even after due notice by the Election Commission and the Election Commission satisfied that he has no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares Shri Talwar Shankar Laxman to be disqualified for being chosen as and for being a member of either House of Parliament or the Legislative Assembly or Legislative Council of a State or Union Territory for a period of three years from the date of this order.

[No. 76/GOA-LA/2002]

By Order,
S. K. KAURA, Secy.

नई दिल्ली, 13 अगस्त, 2004

आ. अ. 52.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग, जबलपुर स्थित मध्य प्रदेश उच्च न्यायालय के आदेश दिनांक 21 जून, 2004 जिसमें मध्य प्रदेश राज्य से राज्य सभा के सदस्यों श्रीमती माया सिंह, श्री मोहम्मद अब्दुल्ला खान और श्री सुरेश पचौरी के निर्वाचन को प्रश्नगत करते हुए श्री राम प्रताप सिंह द्वारा, को निर्वाचन अर्जी संख्या 2002 का 3 में दाखिल को गई याचिका को इसके द्वारा प्रकाशित करता है। (निर्णय इस अधिसूचना के अंग्रेजी भाग में छपा है)।

[सं. 82/रा.स.-म.प्र./3/02/2004]

आदेश से,

ए. के. मजुमदार, सचिव

New Delhi, the 13th August, 2004

O. N. 52.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the order of the High Court of Madhya Pradesh at Jabalpur dated 21st June, 2004 in Election Petition No. 3 of 2002 filed by Shri Ram Pratap Singh calling in question the election of Smt. Maya Singh, Shri Mohd. Obedulla Khan and Shri Suresh Pachori as the Members of the Council of States from the State of Madhya Pradesh.

HIGH COURT OF MADHYA PRADESH

JABALPUR

Election Petition No. 3 of 2002

Ram Pratap Singh

Vs.

Smt. Maya Singh and others.

Present : Hon'ble Shri S.K. Kulshrestha, Judge.

Shri Pranay Verma, for the petitioner. Shri Ravindra Shrivastava, Senior Advocate, with Shri Shekar Sharma for respondent No. 1

Shri Vivek Ranjan Pandey, for respondent No. 2 and 3.

Date of hearing : 6-4-2004

Date of order : 21-6-2004

ORDER

By this Election Petition under Section 81 of the Representation of the People Act, 1951, the petitioner who was a member of the Madhya Pradesh Legislative Assembly from Nagodh Constituency No. 60 of Satna, has challenged the election of the respondents to the Rajya Sabha (Council of States) in the biennial election, 2002.

2. The Election Commission of India issued notification No. 318/1/2002(1), dated 7-3-2002, for election

of three members to the Council of State from the State of Madhya Pradesh. According to the programme for biennial election from Madhya Pradesh, last date for filing nomination was 14-3-2002, for scrutiny of nomination, 15-3-2002, and for withdrawal of nomination, 18-3-2002. After the scrutiny, list of valid candidates was published in which the three respondents were included and since only three candidates were validly nominated, the respondents were declared elected unopposed. The petitioner contends that the nomination of the respondents ought to have been rejected as by not depositing a sum of ten thousand rupees as required under Section 34(1) (a) of the Representation of the People Act, 1951, and by depositing only a sum of Rs. 5,000 instead, the respondents had failed to comply with the mandatory requirements and since the respondents had not been duly nominated, their nomination deserved to be rejected.

3. The respondents have filed separate returns. In her return, the respondent No. 1 has raised preliminary objection with regard to the maintainability of the petition in breach of the provisions of Section 81(3) of the Representation of the People Act, 1951. It is stated that Annex P/1 to P/7 form an integral part of the Election Petition but they have not been attested by the petitioner under his own signature to be true copy of the petition and on the annexures there is no attestation. It is further pointed out that main ground on which the sanctity of her election has been attacked is that provisions of Section 34(1) (a) of the Representation of People Act, 1951 have not been complied with by her but, on a plain reading, provisions of Section 34(1)(b) alone were applicable and, therefore, the petition deserves to be dismissed at the threshold. It has further been averred that although there is no doubt that in election to Rajya Sabha only the provisions of Section 34(1) (b) applied, the doubt is further removed by the specific provisions contained in Section 39 (2) of the Representation of the People Act, 1951, which specifically exclude the applicability of the first limb of Section 34(1). It has further been stated that it has not even been averred that the result of the election has been materially affected by the alleged improper acceptance of the nomination. Although respondents No. 2 & 3 have filed separate return, they too have resisted the case of the petitioner on the same premises as the respondent No. 1.

4. In view of the pleadings of the parties, the following issues were framed :—

“1 (a) Does the petition comply with the requirement of Section 81 (3) of the Representation of People Act, 1951?

(b) If not, the effect.

2 (a) Whether, for nomination for election from the respective constituency each of the respondents was required to deposit a sum of Rs. 10,000/- under

Section 34 (1) (a) of the Representation of People Act?

(b) If yes, the effect of failure to deposit the sum so required."

5. Since no evidence was necessary as facts were admitted, the learned counsel for the parties were heard. The petitioner also submitted written synopsis which were taken on record.

6. The contentions issue between the parties being Issue No. 2, deal with the said issue first. For better appreciation of the controversy raised, it is first necessary to refer to the provisions of Section 34 of the Representation of the People Act, 1951 :—

"34. Deposits.—[(1) A candidate shall not be deemed to be duly nominated for election from a constituency unless he deposits or causes to be deposited,—

- (a) in the case of an election from Parliamentary constituency, a sum of ten thousand rupees or where the candidate is a member of a Scheduled Caste or Scheduled Tribe, a sum of five thousand rupees; and
- (b) in the case of an election from an Assembly or Council constituency, a sum of five thousand rupees or where the candidate is a member of a Scheduled Caste or Scheduled Tribe, a sum of two thousand five hundred rupees:

Provided that where a candidate has been nominated by more than one nomination paper for election in the same constituency, not more than one deposit shall be required of him under this sub-section.]

(2) Any sum required to be deposited under Sub-section (1) shall not be deemed to have been deposited under that sub-section unless at the time of delivery of the nomination paper [under sub-Section (1) or, as the case may be, Sub-section (1A) of Section 33] the candidate has either deposited or caused to be deposited that sum with the returning officer in cash or enclosed with the nomination paper a receipt showing that the said sum has been deposited by him or on his behalf in the Reserve Bank of India or in a Government Treasury."

7. The contention of the learned counsel for the petitioner is that since Rajya Sabha (Council of States) is a part of Parliament, it was necessary for each of the respondents to have deposited ten thousand rupees with their nomination form as none of them belong to Scheduled Caste or Scheduled Tribe. To appreciate the controversy, it is necessary to refer to a few provisions.

8. Article 79 of the Constitution of India refers to the Constitution of Parliament and provides that there shall be a Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of States and the House of the People. Article 80 of the Constitution refers to composition of the Council of States and Clause (4) provides that representatives of each State in the Council of States shall be elected by the elected members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote.

9. Section 2(f) of the Representation of the People Act, 1950 defines "Parliamentary Constituency" to mean a constituency provided [by law] for the purpose of elections to the House of the People. Thus, allusion to the Parliamentary Constituency in Section 34(1)(a) of the Representation of the People Act, 1951 is only to the Parliamentary Constituency meant for the purpose of election to the House of the People namely Lok Sabha which shows that the requirement of the deposit of ten thousand rupees contained in Section 34(1)(a) is not applicable in respect of the nomination for Rajya Sabha (Council of States). Section 39(2) of the Representation of the People Act, 1951 specifically excludes the applicability of Section 34(1) (a) in the case of such elections and reads as under :—

"39. Nomination of candidates at other elections.—(1) As soon as the notification calling upon the elected members or the members of the Legislative Assembly of a State or the members of the electoral college of a [Union territory] to elect a member or members is issued, the Election Commission shall, by notification in the Official Gazette, appoint—

- (a) the last date for making nominations, which shall be the [seventh day] after the date of publication of the first-mentioned notification or, if that day is a public holiday, the next succeeding day which is not a public holiday;
- (b) the date for the scrutiny of nominations, which shall be [the day immediately following] the last date for making nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;
- (c) last date for the withdrawal of candidatures, which shall be [the second day] after the date for the scrutiny of nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;
- (d) the date or dates on which a poll shall, if necessary, be taken, which or the first of which shall be a date not earlier than the

seventh day after the last date for the withdrawal of candidatures; and

(e) the date before which the election shall be completed.

(2) The provisions of Sections 31 to 38, excluding Sub-sections (2) and (5) of Section 33 and [clause (a) of Sub-section (1) of Section 34], shall apply in relation to any such election as they apply in relation to an election in any constituency:

Provided that—

(a) any references in the said provisions to the electoral roll of the constituency shall unless the context otherwise requires, be construed, in the case of an election by the members or the elected members of the Legislative Assembly of the State, as references to the list of members of elected members, as the case may be, of that Assembly maintained under Sub-section (1) of Section 152, and in the case of an election by the members of the electoral college of a [Union territory], as references to the list of members of such electoral college maintained under Sub-section (2) of that Section;

[(aa) the reference in the opening paragraph of Sub-section (1) of Section 33 to “an elector of the constituency as proposer” shall be construed as a reference to “ten per cent of the elected members or of the members of the Legislative Assembly of a State or of the members of the electoral college of a Union territory, as the case may be, or ten members concerned, whichever is less, as proposers”:

Provided that where as a result of the calculation of the percentage referred to in this clause, the number of members arrived at is a fraction and if the fraction so arrived at is more than one-half it shall be counted as one, and if the fraction so arrived at is less than one-half it shall be ignored;]

[(ab) in the case of an election to the Legislative Council of a State by the members of the Legislative Assembly of that State, clause (a) of Sub-section (2) of Section 36 shall be construed as including a reference to sub-clause (d) of clause (3) of article 171;]

(b) any references in the said provisions of Section 30 shall be construed as references to Sub-section (1) of this Section; and

(c) at the time of presenting the nomination paper, the returning officer may require the person presenting the same to produce either

a copy of the electoral roll, or part of the electoral roll, in which the name of the candidate is included or a certified copy of the relevant entries in such roll.]

10. Learned counsel for the petitioner submitted that if it were to be held that Section 34(1)(a) is not applicable in the case of election to Rajya Sabha, the provisions would be rendered otiose. I am afraid, the argument ignores the fact that for Parliamentary constituency also the election takes place and, therefore, by excluding the applicability of Section 34(1)(a) of the Representation of the People Act, 1951, in respect of the election covered by the provisions of Section 39 of the Act, the provision does not become redundant. As a matter of fact, even without the specific provision in Section 39(2) excluding the applicability of Section 34(1)(a), since the provision of Section 34(1)(a) applies to election from a Parliamentary Constituency which can only mean a constituency provided by law for the purpose of election to the House of the People as per Section 2(f) of the Representation of the People Act, 1950, the said provision was not applicable in the case of election to Council of States. There is, thus, no substance in the petition.

11. I, therefore, hold that it was not necessary for any of the respondents to deposit a sum of ten thousand rupees with the nomination form under Section 34(1)(a) of the Representation of the People Act, 1951 as the said provision was not applicable in their case.

12. Issues No. I :

Though the issue has been framed with regard to the non-compliance of Section 81(3) of the Representation of the People Act, 1951 but no arguments were advanced by any of the parties on the said issue. It has not been demonstrated how the petitioner has violated the provisions of Section 81(3) of the Representation of the People Act, 1951.

13. The petition therefore fails and is dismissed but with no order as to costs. The outstanding amount of security deposit be refunded to the petitioner.

21-6-2004

(S.K. Kulshrestha)
Judge

[No. 82/CS-MP/3/02/2004]

By Order,
A.K. MAJUMDAR, Secy.